

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

ANDRES CELEDONIO  
4134 Hoffman Drive  
Woodbridge, Virginia 22193

OSVALDO GUTIERREZ  
6401 King Louis Drive  
Alexandria, Virginia 22312

JUAN ALBA  
4134 Hoffman Drive  
Woodbridge, Virginia

JOSE DE JESUS ORTEGA ALDANA  
6306 King Louis Drive  
Alexandria, Virginia 22312

POFIRIO HERNANDEZ DIAZ  
6306 King Louis Drive  
Alexandria, Virginia 22312

FRANCISCO CELEDONIO  
5583 Trent Court, Apt. A  
Alexandria, Virginia 22311

OSCAR ESTRADA  
6306 King Louis Drive  
Alexandria, Virginia 22312

LUIS MANUEL CELEDONIO  
6306 King Louis Drive  
Alexandria, Virginia 22312

CIRILO ALBA  
6476 Wingate, Street  
Alexandria, Virginia 22312

and

JOSE LUIS TORRES CELEDONIO  
6401 King Louis Drive  
Alexandria, Virginia 22312

Civil Action No.  
1:15-cv-1079  
LMB/MSN

FILED  
AUG 24 2015  
CLERK, U.S. DISTRICT COURT  
ALEXANDRIA, VIRGINIA

STEIN SPERLING BENNETT  
DE JONG DRISCOLL PC  
  
ATTORNEYS AT LAW  
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ROCKVILLE, MARYLAND 20850  
  
TELEPHONE 301-340-2020

Plaintiffs,

v.

DRAINAGE & EROSION SOLUTIONS, LLC  
1889 Preston White Drive, Suite 104  
Reston, Virginia 20191

Serve: Resident Agent  
Taylor & Rea PLC  
10482 Armstrong Street  
Fairfax Virginia 22030

DRAINAGE & EROSION SOLUTIONS  
GREATER WASHINGTON, LLC  
1889 Preston White Drive, Suite 104  
Falls Church, Virginia 20191

Serve: Resident Agent  
Taylor & Rea PLC  
10482 Armstrong Street  
Fairfax Virginia 22030

KENNETH G. FRAINE  
1889 Preston White Drive, Suite 104  
Reston, Virginia 20191

Defendants.

### COMPLAINT

Plaintiffs, Andres Celedonio, Osvaldo Gutierrez, Juan Alba, Jose de Jesus Ortega Aldana, Porfirio Hernandez Diaz, Francisco Celedonio, Oscar Estrada, Luis Manuel Celedonio, Cirilio Alba and Jose Luis Torres Celdonio (“Plaintiffs”), by and through their attorneys, Mary J. Craine Lombardo and Stein Sperling Bennett De Jong Driscoll PC, hereby file their Complaint against Defendants Drainage & Erosion Solutions, LLC and Drainage & Erosion Solutions Greater Washington, LLC and Kenneth G. Fraine (collectively “Defendants”), under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, *et seq.* (“FLSA”), stating as follows:

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## INTRODUCTION

Plaintiffs worked for Defendants as laborers. Plaintiffs were paid at the same weekly rate regardless of the hours worked. Plaintiffs worked hours in excess of forty hours per week and were not paid at the overtime rate of one and a half times their regular hourly wages as required by federal law. Defendants have willfully violated the clear and well-established overtime provisions of the FLSA. Plaintiffs seek compensatory and statutory damages for all unpaid overtime compensation, as well as attorneys' fees and costs.

## JURISDICTION & VENUE

1. This Court has subject matter jurisdiction over the causes of action alleged in this Complaint pursuant to 28 U.S.C. §§ 1331 and 1337, and 29 U.S.C. § 216.

2. Venue is proper pursuant to 28 U.S.C. § 1331.

## PARTIES

3. Plaintiffs are adult residents of Virginia.

4. Defendants Drainage & Erosion Solutions Greater Washington, LLC and Drainage & Erosion Solutions, LLC are Virginia limited liability companies.

5. Defendant Kenneth G. Fraine is a principal of the business.

6. At all times material herein, Defendants, in the aggregate and as a single enterprise, had annual gross volume of sales made or business done in an amount exceeding \$500,000.

7. Each Defendant is an "employer" within the meaning of the FLSA.

8. Defendants have at least two or more employees who are engaged in commerce, handle, sell or otherwise work on goods or materials that have moved in or were produced for commerce. Defendants negotiate and purchase from producers and suppliers who operate in interstate commerce and serve customers in interstate commerce.

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9. At all times relevant, Defendants constituted an "enterprise" within the meaning of 29 U.S.C. § 203(r).

10. Defendant Kenneth G. Fraine controlled the day to day operations of Drainage & Erosion Solutions Greater Washington, LLC and Drainage & Erosion Solutions, LLC.

11. Defendant Kenneth G. Fraine had the power to hire, fire, suspend, and discipline Plaintiffs.

12. Defendant Kenneth G. Fraine supervised Plaintiffs directly or indirectly.

13. Defendant Kenneth G. Fraine directly or indirectly set and controlled Plaintiffs' work schedules or had the power to do so.

14. Defendant Kenneth G. Fraine directly or indirectly set and determined the rate and method of Plaintiffs' pay or had the power to do so.

15. Federal courts have made clear that individual employers are liable under FLSA, if the employer met the economic reality test for "control." *Chao v. Mid-Atlantic Installation Services, Inc.*, 16 Fed Appx. 104 (2001).

16. Defendant Kenneth G. Fraine would be considered an employer for purposes of individual liability because of his intrinsic involvement in the business.

#### FACTS

17. Plaintiffs were employed by Defendants as laborers.

18. Plaintiffs worked for Defendants during the statutory period and were not paid time and a half for hours worked in excess of 40 hours per week.

19. Plaintiffs worked approximately 55 hours per week.

20. Plaintiff Andres Celedonio is owed approximately \$20,523.25 in unpaid wages.

21. Plaintiff Osvaldo Gutierrez is owed approximately \$17,212.50 in unpaid wages.

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22. Plaintiff Juan Alba is owed approximately \$22,365.00 in unpaid wages.
23. Plaintiff Jose de Jesus Ortega Aldana is owed approximately \$2,535.00 in unpaid wages.
24. Plaintiff Porfirio Hernandez Diaz is owed approximately \$16,065.00 in unpaid wages.
25. Plaintiff Francisco Celedonio is owed approximately \$20,947.50 in unpaid wages.
26. Plaintiff Oscar Estrada is owed approximately \$14,895.00 in unpaid wages.
27. Plaintiff Luis Manuel Celedonio is owed approximately \$16,042.50 in unpaid wages.
28. Plaintiff Cirilo Alba is owed approximately \$15,862.50 in unpaid wages.
29. Plaintiff Jose Luis Torres Celedonio is owed approximately \$16,792.50 in unpaid wages.
30. Plaintiffs are owed overtime wages that Defendants willfully failed and refused to pay to Plaintiffs in violation of federal law.
31. By statute, Defendants are required to maintain records which document the wages, hours and other conditions of employment. *See* 29 U.S.C. §211.
32. The precise number of hours worked, and wages owed, should be revealed through discovery.
33. Defendants knowingly and intentionally violated Plaintiffs' rights under federal law.

**COUNT I  
(FLSA)**

34. Plaintiffs adopt herein by reference paragraphs 1 through 33 above as if fully set forth herein.

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35. Defendants were required to pay Plaintiffs compensation at the rate of one and a half times their regular hourly rates for all hours worked in excess of forty hours per week. *See 29 U.S.C. § 207(a)(2).*

36. Throughout the Employment Period, Defendants failed to compensate Plaintiffs at the rate of one and a half times their regular hourly rates for all hours worked in excess of forty hours per week.

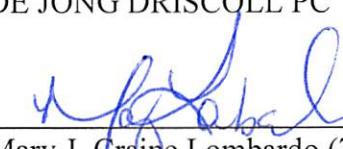
37. Defendants' actions complained of herein constitute a willful violation of Section 207 of the FLSA.

38. Defendants' violation makes them liable to Plaintiffs for all unpaid overtime compensation, and an additional equal amount as liquidated damages.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment against Defendants, jointly and severally, in their favor in an amount to be determined at trial, but not less than \$326,481.50 which is two times the total overtime compensation owed, to grant Plaintiffs their reasonable attorneys' fees and costs, and such other and further relief as the Court deems just and proper.

Respectfully submitted,

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DE JONG DRISCOLL PC

By: 

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